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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LENNON MCCLORY TOM,

Defendant and Appellant.

H040957

(Santa Clara County

Super. Ct. No. CC965146)

Defendant Lennon McClory Tom was placed on probation after he pleaded no contest to one count of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).¹) He was initially ordered to pay victim restitution of \$4,830, but at a later hearing the trial court ordered him to pay an additional \$39,564.31 in victim restitution.

On appeal, defendant's appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that states the case and facts, but raises no issue. We notified defendant of his right to submit written argument on his own behalf within 30 days. The 30-day period has elapsed and we have received no response from defendant.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record. Following the California Supreme Court's direction in *People v. Kelly, supra*, at page 110, we provide a brief description of the facts and the procedural history of the case.

BACKGROUND

A. Charged Offenses²

On December 21, 2009, off-duty San Jose Police Officer Brian Alexander was working as a traffic control officer for the Oakridge Mall. Officer Alexander was in his police uniform, with a police traffic vest and a green police rain jacket.

Officer Alexander instructed defendant to turn right rather than making a left-hand turn. Defendant then drove towards the officer at a speed of approximately five miles per hour. After his vehicle “ ‘brushed up’ ” against the officer, defendant fled.

Defendant later claimed he thought Officer Anderson was a security guard, not a police officer, that the officer jumped in front of his vehicle, and that he did not believe his vehicle hit the officer.

B. Charges, Plea, and Sentencing Hearing

On February 28, 2011, the District Attorney filed a first amended information charging defendant with assault on a peace officer with a deadly weapon (count 1; § 245, subd. (c)) and assault by means of force likely to produce great bodily injury (count 2; § 245, subd. (a)(1)).

Also on February 28, 2011, defendant pleaded no contest to count 2 “with non-strike language.” The trial court advised defendant that he would be required to pay victim restitution.

² Our summary of the facts underlying the charged offenses is taken from the probation report.

At the sentencing hearing held on April 22, 2011, Officer Alexander described how he had initially been able to work as a detective, but how he had been placed on disability leave after he had returned to patrol. He described having pain whenever he sat down for long periods, not being able to enjoy his “normal active lifestyle,” suffering a loss of income, and possibly needing to end his career as a police officer.

As provided by the terms of the plea bargain, defendant was placed on probation for three years. He was ordered to serve four months in county jail followed by 30 days on the “weekend work program.” He was ordered to enter and complete an anger management program approved by the probation officer after completing the weekend work program.

Defendant was also ordered to pay \$4,830 in victim restitution to Officer Alexander, “per stipulation.” A restitution order filed on August 10, 2011, reflected the stipulated restitution amount and indicated the restitution was for medical expenses and lost wages.

C. Restitution Hearing

On April 11, 2014, the court held a restitution hearing.³ Officer Alexander testified at the hearing, but he had to stand instead of sit due to a recent back surgery. He was “in a lot of pain” during his testimony.

Officer Alexander explained that on the day of the incident, he had been working a “pay job,” which is “where officers are hired outside of their regular duties on patrol to perform duties as a police officer.” Officer Alexander further explained that the initial \$4,830 restitution order covered only his lost income from such pay jobs.

For about eight months after the incident, Officer Alexander had worked in a modified position. However, he had to go “out on disability” because of his injuries,

³ “The court may modify the amount [of restitution], on its own motion or on the motion of the district attorney, the victim or victims, or the defendant.” (§ 1202.4, subd. (f)(1).)

which included six bulged disks. The injuries had caused him to suffer numbness in his leg, “drop foot,” pain, and limited feeling in his hand. The treatment for his injuries had included a fusion to his neck on two levels, a spinal surgery, and elbow surgery due to a pinched ulnar nerve. He was seeing a physical therapist, but he chose not to take pain medication.

Since going on disability, Officer Alexander had not been able to work as a police officer. He could not wear a duty belt, sit long enough to patrol in a patrol vehicle, or walk far enough to be on a foot patrol.

Officer Alexander had received a year’s worth of full pay from the City of San Jose. After that, he had received payment from the state, supplemented with his vacation, “comp,” and sick time pay, which had allowed him to “bring it up to a full paycheck.” However, his disability checks had ended in November of 2013.

Officer Alexander submitted a restitution claim for \$39,564.31. That amount included three things: pay jobs, his normal pay, and the “supplemental amount” that came from his leave time.

For his pay jobs, Officer Alexander looked at the amount he had received in 2009, the last year he had been able to do such work, which was a lower than average year for his pay jobs. He did not include the year 2010, as the prior restitution order had covered that year. He included the years 2011, 2012, and 2013, as well as the first four months of 2014.

For lost wages and supplemental pay, Officer Alexander obtained his payment records from the San Jose Police Department as well as his bank records, which showed the amount deposited. He calculated the amount that had accrued since November 2013, when he had stopped getting paid.

On cross-examination, Officer Alexander acknowledged that he had not attempted to learn a new profession that might accommodate his injuries—i.e., one that would not require him to sit or stand for long periods. Officer Alexander explained that he could

not continue to be a police officer if he did so, and that he had recently applied for retirement benefits.

The trial court issued a written order on April 18, 2014. The court found that defendant was a “ ‘substantial factor’, indeed the sole factor, in causing the victim’s injuries.” The court referenced Officer Alexander’s testimony about being unable to work, about his injuries and treatment, and about his pain. The court also reviewed Officer Alexander’s testimony about his “paid ‘side’ jobs” and about his calculation of the \$39,564.31 lost wages claim. The court found “the testimony of the victim to be credible and the calculations used by the victim to be reasonable,” it noted that a civil lawsuit had not included damages for lost wages, and it awarded the full amount requested.

DISCUSSION

Having carefully reviewed the entire record, we conclude that there are no arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-443.)

DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.